

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

The Financial Oversight and Management Board for
Puerto Rico,

as representative of

The Commonwealth of Puerto Rico, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

In re:

The Financial Oversight and Management Board for
Puerto Rico,

as representative of

The Puerto Rico Electric Power Authority,

Debtor.

PROMESA
Title III

No. 17 BK 4780-LTS

**This Document Relates Only to
PREPA/Case No. 17 BK 4780-LTS**

**STATEMENT AND RESERVATION OF RIGHTS OF PREPA BOND TRUSTEE
REGARDING
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT**

U.S. Bank National Association, solely in its capacity as trustee (the “PREPA Bond Trustee”) under the Trust Agreement dated as of January 1, 1974, between the Puerto Rico Electric

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19 BK 5523-LTS) (Last Four Digits of Federal Tax ID: 3801); and (vi) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Power Authority and the PREPA Bond Trustee (the “Trust Agreement”), hereby files this statement and reservation of rights (the “Reservation”) with respect to the *Motion of Puerto Rico Electric Power Authority Pursuant to Bankruptcy Code Section 105, Promesa Section 315(a), and Bankruptcy Rule 9019 for Order Approving Settlement Agreement with Certain Insurers and Granting Related Relief* [Dkt. No. 2234 in 17-BK-4780 and Dkt. No. 14477 in 17-BK-3283] (the “Motion”).² In support of this Reservation, the PREPA Bond Trustee states as follows:

1. In the Motion, the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) and PREPA seek a comfort order to facilitate an agreement reached with certain property insurers (the “Insurers”) regarding a payment of \$3,500,000 (the “Insurance Proceeds”) to PREPA as payment for insurance proceeds under certain commercial property insurance policies issued to PREPA by the Insurers for the policy periods from May 15, 2014 to May 15, 2015 and May 15, 2015 to May 15, 2016 (the “Property Insurance”) for perpetuation damage to fuel storage tanks. The Motion also seeks assurances from the Court that payment of the Insurance Proceeds can be made free from problems relating to the potential claims of PREPA’s creditors. The Trustee does not object to the relief being sought in the Motion.

2. Movants filed a similar motion in (a) 2017 relating to payments for hurricane-related losses; and (b) 2020 relating to earthquake-related losses (collectively, the “Prior Insurance Motions”).³ Each of the Prior Insurance Motions was resolved by entering a consensual order allowing for the requested comfort to those insurers and process, while preserving the rights and respective legal positions of PREPA, the PREPA Bond Trustee, and the Bondholders under the

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

³ See *Urgent Joint Motion of Financial Oversight and Management Board for Puerto Rico, and the Puerto Rico Fiscal Agency and Financial Advisory Authority for Order Concerning Receipt and Use of Puerto Rico Electric Power Authority Insurance Proceeds* [Dkt. No. 491].

Trust Agreement and related documents. *See Order Granting Urgent Joint Motion of Financial Oversight and Management Board for Puerto Rico, and the Puerto Rico Fiscal Agency and Financial Advisory Authority for Order Concerning Receipt and Use of Puerto Rico Electric Power Authority Insurance Proceeds* [Dkt. No. 514] (“Hurricane Order”)⁴; *Order Granting Motion of Financial Oversight and Management Board for Puerto Rico and Puerto Rico Electric Power Authority for Release of Insurance Proceeds for Earthquake Losses* [Dkt. No. 2035] (“Earthquake Order” and together with Hurricane Order the “Prior Orders”).⁵

3. The PREPA Bond Trustee feels constrained to note for the record that it disagrees with certain statements included in the Motion regarding PREPA’s rights to the Insurance Proceeds (which constitute “Revenues” within the meaning of the Trust Agreement) but, as before, the PREPA Bond Trustee does not object to the relief being sought in the Motion, especially in light of protective language included in the proposed order.

4. The proposed order submitted for the Motion clarifies that the Motion is granted only to the extent set forth in the Order and includes the following:

Except as expressly stated herein, this Order shall not be interpreted to limit any party’s rights and, for the avoidance of doubt, shall not be interpreted to prejudice the rights and interests of holders and/or insurers of PREPA’s power revenue bonds. All rights of such parties to take actions necessary to protect their rights with respect to any action outside the scope of this Order or with respect to any agreement with creditors shall be preserved.

⁴ See Hurricane Order ¶ 7 “Except as expressly stated herein, this Order shall not be interpreted to limit any party’s rights and, for the avoidance of doubt, shall not be interpreted to prejudice the rights and interests of holders and/or insurers of PREPA’s power revenue bonds. All rights of such parties to take any actions necessary to protect their rights with respect to any action outside the scope of this Order or with respect to any agreement with creditors shall be preserved.”

⁵ See Earthquake Order ¶ 8 “Except as expressly stated herein, this Order shall not be interpreted to limit any party’s rights and, for the avoidance of doubt, shall not be interpreted to prejudice the rights and interests of holders and/or insurers of PREPA’s power revenue bonds. All rights of such parties to take any actions necessary to protect their rights with respect to any action outside the scope of this Order or with respect to any agreement with creditors shall be preserved.”

5. With the understanding that this language preserves the rights and interests held by the PREPA Bond Trustee on behalf of the holders of PREPA Bonds except with respect to the \$3,500,000 of Insurance Proceeds that are subject to the Motion, the PREPA Bond Trustee does not object to the Motion. If the form of proposed order approving the Motion is modified in any material way the PREPA Bond Trustee reserves all rights to be heard with respect to the Motion.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, on this 14th of October, 2020.

We hereby certify that on this same date we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system of the U.S. Bankruptcy Court for the District of Puerto Rico for Case Nos. 17-BK-4780 and 17-BK-3283, which will send notification of such filing to all counsel of record participating in the CM/ECF system.

Respectfully submitted:

Respectfully submitted:

**RIVERA, TULLA AND FERRER, MASLON LLP
LLC**

By: /s/ Iris J. Cabrera-Gómez

Iris J. Cabrera-Gómez
USDC-DPR No. 221101
Email: icabrera@riveratulla.com
Eric A. Tulla
USDC-DPR No. 118313
Email: etulla@riveratulla.com
50 Quisqueya Street
San Juan, PR 00917-1212
Tel: (787)753-0438
Fax: (787)767-5784 (787)766-0409

By: /s/ Clark T. Whitmore

William Z. Pentelovitch (admitted *pro hac vice*)
John T. Duffey (admitted *pro hac vice*)
Clark T. Whitmore (admitted *pro hac vice*)
Jason M. Reed (admitted *pro hac vice*)
90 South Seventh Street, Suite 3300
Minneapolis, MN 55402
Telephone: 612-672-8200
Facsimile: 612-672-8397
E-Mail: clark.whitmore@maslon.com
bill.pentelovitch@maslon.com
john.duffey@maslon.com
jason.reed@maslon.com

**ATTORNEYS FOR U.S. BANK NATIONAL
ASSOCIATION, IN ITS CAPACITY AS PREPA
BOND TRUSTEE**